

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1525 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PREMJIBHAI MAVJIBHAI PATEL

Versus

DAHYABHAI MORARBHAI AHER

Appearance:

MR MA KHARADI for Petitioners

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/02/99

ORAL JUDGEMENT

This Revision Application under Section 115 of the C.P.C. is directed against the order dated 9.9.1998 passed by the Joint District Judge, Surat, whereby the learned Judge set aside the order of the Civil Judge (J.D.). Mandavi dated 23.6.1997 in Regular Civil Suit No.7/97 and restored the ad-interim relief granted on 10.3.1997.

2. The necessary facts are that the respondent-plaintiff filed Regular Suit in the Court of learned Civil Judge (JD), Mandavi for declaration and injunction stating inter-alia that the land bearing survey No.90 situated in village Togapur, Mandavia, District Surat was sold to defendants No.1 and 2 on 12.10.1990 and entry was made in the Revenue record being entry No.695. Defendants No.1 and 2 had not taken permission under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948. As the defendant No.1 therein was not agriculturist. the Collector has cancelled the said entry as in his opinion, the transaction was invalid. The entry was as such substituted providing entry No.825. Along with suit, application Exh.5 for the interim injunction was filed. The court granted ad-interim injunction restraining the defendants not to disturb the possession of the plaintiff. The defendants contested application saying that they are in possession of the land. So far as the revenue entry is concerned, it was submitted that the order of the Mamlatdar under section 84 (C) of the Tenancy Act is under challenge before the competent authority i.e. the Dy.Collector. The learned trial Judge rejected the Application Exh.5 filed by the plaintiff. The matter was carried in Appeal. The learned Appellate Judge found that the entire transaction was illegal being in violation of the provisions of the Bombay Tenancy Act and further found that it was the plaintiff who was in possession of the suit land. In view of the finding he set aside the order of the trial Court and restored the ad-interim relief dated 10.3.1997 by the impugned order.

3. It is contended by Mr M A Kharadi, learned Advocate for the petitioner that a proper scrutiny of the record shows that the defendants are in possession of the suit land. He further submitted that it is only defendant No.2 i.e. Popatbhai Patel who is said to be not an agriculturist, but the Collector has not said anything with respect to defendant No.1. It is further submitted that since the order of the Mamlatdar is under challenge before the Dy.Collector, transaction of the year of 1990 is to be said to be illegal at this stage. On the other hand, Mr R C Jani, learned Advocate appearing for the respondent submits that all these aspects have been considered by the First Appellate Court. There is no error of jurisdiction in the order of the First Appellate Court, which calls for interference by this Court in exercise of section 115 of the C.P.C.

4. I have considered the rival contentions. It is not in dispute that the entry being 695 in favour of the defendants has been cancelled in proceedings under 84 (C) of the Bombay Tenancy Act. The Mamlatdar has found that the transaction is bad. Simply because the appeal is pending before the Mamlatdar, it cannot be said that the view of the Mamlatdar is bad in law. So far as the question of possession is concerned, the Appellate Court has found that the plaintiff in possession of the suit land on the date of filing of the suit on the basis of documents and affidavit filed by the plaintiff. The said finding of fact does not call for interference. Thus, in view of the fact that prima facie there is evidence to show that the transaction whereby the defendants are said to have purchased the land in question is found to be illegal and further that the plaintiff was in possession of the suit land on the date of filing of the suit, no interference in the judgment of the Jt. District Judge, Surat is called for by this Court.

5. Consequently, I find no merit in this Revision Application and the same is accordingly rejected. Rule discharged. Interim relief stands vacated.

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msp.